

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 997 of 1982

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE MR. K.SREEDHARAN
and

MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 & 2 YES : 3 to 5 : NO

M L VANKAR

Versus

STATE OF GUJARAT

Appearance:

MRS KETTY A MEHTA for Petitioners
MR UA TRIVEDI, AGP, for Respondent No. 1
MR MEHUL SHARAD SHAH for Respondent No. 2
NOTICE SERVED for Respondent No. 3, 5, 6, 7, 8

CORAM : THE CHIEF JUSTICE MR. K.SREEDHARAN and
MR.JUSTICE A.R.DAVE

Date of decision: 22/04/98

C.A.V. JUDGMENT (Per A.R. Dave, J.)

The petitioners have approached this Court with a prayer that rule 3(b)(ii) of the Surveyor (Town Planning

and Valuation Department) Recruitment Rules, 1975 (hereinafter referred to as 'the Surveyor's Rules') and rule 3(b)(iii) of the Planning Assistant (Town Planning and Valuation Department) Recruitment Rules, 1975 (hereinafter referred to as 'the Planning Assistant's Rules') be struck down and selection for the post of surveyors made on 15.12.1981 and 3.3.1982, in pursuance of the Surveyor's Rules referred to hereinabove, be quashed and set aside. For the sake of convenience, the above-referred rules have been reproduced below:

Rule 3(b)(ii) of the Surveyors Rules

"A Bachelor's Degree in Arts, in Geography, Sociology, Economics or Statistics, or a Bachelor's Degree in Law of a recognised University or an institution or a qualification equivalent thereto recognised by the government."

Rule 3(b)(iii) of the Planning Assistants Rules

"Master's Degree in Arts, in geography, Sociology, Economics, or Statistics or Master's Degree in Law of a recognised University or an institution or a qualification equivalent thereto recognised by the government with two years practical experience in town planning, joined after obtaining the qualification specified in this sub-clause."

2. Learned Advocate Mrs. K.A. Mehta appearing for the petitioners has submitted the facts which are as under:-

3. Respondent No.1 Government wanted to fill up certain posts in the cadre of Surveyors and therefore without issuance of any public advertisement or without inviting any application from any source, respondent No. 2 appointed respondents Nos. 3 to 8 as Surveyors in Town Planning Department which is under Panchayat Housing and Urban Development Department of the State of Gujarat. It has been submitted by Mrs. Mehta that Rul 3(b)(ii) of the Surveyor's Rules provides for qualifications for the post and the qualifications prescribed therein have nothing to do with the nature of work to be done by the surveyors and therefore the said rule should be struck down.

4. Ld. Advocate Mrs. Mehta has submitted that as per rule 3(b)(ii) of the Rules, a candidate having a

Bachelor's Degree in Arts, in Geography, Sociology, Economics or Statistics or a Bachelor's Degree in Law of a recognised University or an institution or qualification equivalent thereto recognised by the Government can be appointed as a surveyor provided other conditions mentioned in the surveyor's rules are fulfilled. It has also been submitted that the surveyors are concerned with measurement, valuation and survey of land and preparation of plans etc. Thus, the work to be done by the surveyors is technical in nature. At times they have to appear as witnesses or experts on the technical subject before the court. For the purposes referred to hereinabove lands and/or superstructures are to be inspected, measured or valued. Nature of construction, material used in the construction and other relevant factors are to be considered by them and ultimately value of the land and the building is to be ascertained. They have also to prepare plans and therefore they should have sufficient knowledge in the field of engineering or architecture. It has been therefore submitted that qualification with regard to graduation in Arts with Geography, Sociology, Economics or Statistics as subjects or Law has nothing to do with the nature of work which is to be done by the surveyors. It has been submitted that as per provision of rule 3(b)(i) of the Surveyor's Rules, a candidate should possess "a diploma in architecture or in civil engineering of recognised University or institution or its equivalent qualification recognised by the government" and the said qualifications are the real useful and necessary qualifications which a candidate must possess for the purpose of performing duties which a surveyor is required to perform. According to the petitioners, relevant qualification which a candidate must have is a Diploma in Architecture or Civil Engineering or any equivalent degree conferred upon the candidate by a University recognised by the State of Gujarat. It has been strenuously submitted by Mrs. Mehta that if a person who is having graduation in Arts, etc. as per provisions of rule 3(b)(ii) of the Surveyor's Rules is appointed as a surveyor, it would not be possible for the said surveyor to carry out the work which a surveyor is normally supposed to do. For instance, according to the petitioners' submission, if a person who is appointed as a surveyor is a law graduate, it would not be possible for him to ascertain value or measure area of a particular land or a building. If a person is not qualified to value any property or measure any land, he cannot perform duties which are normally required to be performed by a surveyor. Similarly, she has submitted that an arts graduate or a graduate in

geography, sociology, economics or statistics would not be in a position to know even the ABC of engineering or architecture and, therefore, it would not be possible for such a person to perform duties of a surveyor.

5. It has also been submitted that it would not be in the interest of the State or the public at large to appoint persons as surveyors who are having qualifications required as per rule 3(b)(ii) of the Surveyors Rules. Such persons would not be in a position to discharge their abovementioned duties effectively or efficiently because of their lack of knowledge in the field of engineering. Without having basic knowledge about engineering or architecture, one cannot expect anyone to do the work regarding planning as understood by civil engineers. It has been therefore submitted that surveyors having qualifications as per Rule 3(b)(ii) of the Surveyor's Rules shall adversely affect efficiency of their department as such surveyors shall not be in a position to perform their duties and other surveyors having technical qualifications shall be overburdened because they will be the persons who will have to do not only their work but shall also have to do work of surveyors having qualifications prescribed in rule 3(b)(ii) of the Surveyor's Rules.

6. Thus, the main contention of Mrs. Mehta is that a person who is to be appointed to the post of surveyor must be qualified to perform duties which are to be normally performed by a surveyor. Only a person having a Diploma in Architecture or Engineering can perform the duties which are to be performed by a surveyor. As there is no rationale between the qualification prescribed under the said rule and the nature of work to be done by a surveyor, according to the submission made by the learned counsel, the said rule is ultra vires. The said rule must be struck down as it is irrational. She has relied on a judgment delivered by the Hon'ble Supreme Court in the case of N.S. Mehta and others v. Union of India and other reported in AIR 1977 SC at page 1673. The Apex Court has held in the said case that if a test is prescribed for the promotional post, the subject matter of the test must have correlation with the nature of work to be done by the employee. Thus, it has been submitted by her that if the qualification prescribed by any rule of recruitment is not having any correlation with the nature of work to be performed by the employee, such a rule cannot be sustained. In the circumstances, it has been submitted that the qualifications prescribed for the post of surveyor by the rule in question does not have any correlation with the nature of work to be done

by the surveyor and, therefore, the said rule should be struck down.

7. Ld. Advocate for the petitioners has thereafter submitted that at the time when respondents Nos. 3 to 8 were selected by respondent No. 2, no public notice or advertisement was issued. Thus, qualified persons desirous of having an opportunity to serve the respondent government as surveyors could not get any opportunity to know that respondent No. 2 was inclined to appoint surveyors. Had wide publicity been given or at least an advertisement in one of the leading vernacular newspapers been given by respondent No. 2, large number of suitable and perhaps more qualified candidates would have been made available and in that event, respondent No. 2 could have got better candidates. It has been therefore submitted that the process of selection was neither just nor proper. It has been submitted by her that for the purpose of selecting surveyors, respondent No. 2 had only considered candidates of the department who were working in the cadre next below the cadre of surveyor. Persons who were working as clerks etc., were considered for appointment to the post of surveyors. The said process of selection is therefore neither just nor proper. It has been submitted by her that in such a process normally possibilities of having favouritism cannot be ruled out. The persons who were selected were candidates working in the said department. A person who is otherwise favourite can be selected for the post of surveyor and therefore it was submitted by Mrs. Mehta that the process of selection must be condemned and appointment of respondents Nos. 3 to 8 should be quashed and set aside. Ld. Advocate for the petitioners has relied upon a judgment delivered in the case of Maharashtra State Electricity Board Engineers Association, Nagpur vs. Maharashtra State Electricity Board and Anr. reported in AIR 1968 Bombay 65. As per ratio of the said judgment, for the purpose of selection of suitable candidates, the Government authorities are expected to give advertisements so that better qualified candidates can be made available to the government. In the instant case, as no such advertisement was ever given, she has submitted that the process of selection is vitiated by the said illegality and, therefore, appointment of respondents Nos. 3 to 8 should be quashed and set aside.

8. Learned Advocate for the petitioners has further submitted that the post of planning assistants is a promotional post from the post of surveyor. Rule 3(b)(iii) of the Planning Assistants Rules provides that

a person can be appointed to the post of planning assistant if he is having a Master's degree in Arts, in Geography, Sociology, Economics or Statistics or Master's degree in Law of a recognised University or an institution or a qualification equivalent to the abovestated degrees with 2 years practical experience in town planning department after obtaining the qualifications referred to hereinabove. Thus, a surveyor having the aboveresferred qualifications can be promoted to the post of planning assistant. According to Mrs. Mehta, the nature of work to be done by a planning assistant and by a surveyor is practically the same. She has therefore submitted that all submissions made for the purpose of challenge to validity of rule 3(b)(ii) of the Surveyor's Rules would also apply to the challenge to validity of rule 3(b)(iii) of the Planning Assistant's Rules. In view of the aboveresferred to circumstances, we also do not think it necessary to repeat the submissions made by Mrs. Mehta.

9. On the other hand, learned AGP Shri U.A. Trivedi appearing for the State has relied upon the affidavit-in-reply filed by Shri Girish J. Mehta, Under Secretary to the Govt. of Gujarat, Panchayat, Housing and Urban Development Department. He has drawn our attention to the fact that, looking to the latest developments in the subject of town planning, it is necessary to have surveyors with knowledge pertaining to economics, sociology, law etc. He has submitted that the surveyors have to work in a town planning department. The role of town planners has undergone a substantial change in the last few years. For the purpose of effective and efficient planning, the planner is supposed to have some idea with regard to economics, sociology, law etc. Very often surveyors have to appear before courts for the purpose of giving evidence. Moreover, they have also to take care of certain legal aspects while doing their planning work. Moreover, in the process of planning, they have also to consider certain aspects of sociology. The knowledge with regard to the way of living of persons belonging to different classes is of vital importance. They should also have some idea with regard to economics, statistics and geography. Knowledge in the above-referred to subjects can surely help the surveyors in discharge of their duties more effectively. He has relied upon averments made in para 4 of the affidavit-in-reply which say that "...it was felt that in view of the modern fast changing trends and immense growth of developmental projects in various fields undertaken by the governmental departments and agencies and especially a town planning department under

which the posts in question function, it would be in the interest of administration and in the interest of efficiency of service and in larger public interest to associate persons possessing non-technical qualifications relating to day-to-day life of human beings and social and economic environment with such developmental projects. I submit that the concept of public service has changed immensely in modern times and persons in public service have to deal with various aspects of human kind like social economic aspects, legal aspects, geographical and statistical aspects amongst many other aspects to be taken into account. I submit that this has become necessary in view of complex nature of governmental functions and modern body politic and specially in view of the fact that the government in modern times undertakes various projects for social, economic and cultural upliftment of people by adopting various projects including socio welfare projects. I submit that in modern times, the government is not concerned only with protecting citizens from external aggression or maintaining law and order within the State but is more devoted and rightly so in uplifting the people living in the country economically, socially and culturally. I submit that for these objects, the Government at present involves itself in welfare schemes, in economic developments, in social legislations and even in business ventures in case of fields which require governmental handling due to special reasons...."

10. Thus, the learned AGP has submitted that because of the development in the society and for the reasons stated hereinabove, it was necessary to have non-technical persons as surveyors and therefore the respondents had thought of making an amendment in the recruitment rules for the post of surveyors by adding rule 3(b)(ii) so as to enable the respondent government to have non-technical surveyors who can assist the department in several other aspects of planning. He has submitted that the above-referred to requirements cannot be said to be irrelevant or irrational for appointment to the post of surveyors. The learned AGP has fairly conceded that nature of work to be done by the planning assistants and surveyors is similar and therefore he has submitted that his submissions made hereinabove for supporting validity of rule 3(b)(ii) of the Surveyors Rules would also apply to rule 3(b)(iii) of the Planning Assistant's Rules.

11. With regard to the second submission of Ld. Advocate Mrs. Mehta that no public advertisement was given before recruiting the surveyors, learned AGP has

submitted that the said submission of Mrs. Mehta is not wholly true for the reason that before initiating the process of selection, the concerned authorities had invited names of suitable candidates from the employment exchange. After scrutinising candidates whose names were received from the employment exchange and the candidates who had applied for the said posts in pursuance of a departmental circular issued amongst all qualified employees working in the department, the concerned authority had invited the eligible candidates and after interviewing them the candidates who were found most suitable were appointed to the post of surveyors. Thus, after following the above-referred process, the respondent government authorities had appointed respondents Nos. 3 to 8 in the cadre of surveyor. He has submitted that as the above-referred process was adopted by the respondent authorities before selecting the candidates, it cannot be said that other suitable candidates were not given any opportunity to offer their services to the respondent government as surveyors.

12. We have heard the Learned Advocates and have also gone through the affidavit-in-reply filed by the respondent government. After careful consideration, we are of the view that, in fact, the qualification prescribed for the post of surveyor under rule 3(b)(ii) of the Surveyor's Rules and rule 3(b)(iii) of the Planning Assistant's Rules respectively have no nexus or relevance with the duties which are to be performed by the surveyors and/or planning assistants.

13. It is not in dispute that the surveyors and planning assistants have mainly to perform duties with regard to valuation and measurement of lands and buildings and preparation of plans. They have also to draw and copy plans. The above-referred to work surely requires technical knowledge which is possessed by an engineer or an architect. In the course of studies, an architect or an engineer is taught as to how he has to draw plans, value and measure lands and buildings etc. The above-referred to skill can be said to be technical skill which only an engineer or an architect would possess. Thus, for the purpose of doing work as a surveyor and/or planning assistant, one must know how to draw plans, measure and value lands and buildings. So, knowledge of engineering and/or architecture is a sine qua non for the surveyors and planning assistants.

14. It can not be in dispute that now-a-days a town planner has to consider several factors in the course of doing his planning work and therefore one cannot rule out

submission of the learned AGP that knowledge of economics, law, sociology, etc. is also required in the process of planning but it is also a matter of common knowledge that the above-referred to subjects are not having much importance in day-to-day work of surveyors and planning assistants. The said subjects will have some bearing when a town planning scheme is to be prepared. A town planing scheme is not prepared by surveyors or planning assistants who are more concerned with the work of measurement of lands and/or buildings or preparing or copying plans. Even if some work is to be done by surveyors with regard to implementation of legal provisions or appearing as witnesses in the court, experience as surveyors or planning assistants can surely enable them to do that work effectively and it is not necessary to have a degree in law for that purpose. Moreover, surveyors or planning assistants who are law graduates or graduates in arts with economics etc., would be absolutely of no use in the matter of preparation of plans or measurement of lands etc., which is the normal work performed by surveyors and planning assistants. Moreover, the respondent government can get the work relating to legal matters done by availing services of a person well-versed with the said subject who might be called on deputation from another department or by having a law officer. Normally the persons who are actually responsible for planning a town planning scheme are persons having high qualifications in the field of engineering and architecture. The said officers having highly technical knowledge of town planning etc., are well-versed in the subjects like economics, socialogy, statistics, etc., because they study such subjects while studying for engineering or architecture and the said study helps them in the matter of preparation of plans or preparing town planning schemes.

15. In the course of arguments, the learned AGP, in pursuance of a query raised by us, had informed the court that out of approximately 60 surveyors, 15 surveyors were having non-technical qualifications prescribed under rule 3(b)(ii) of the Surveyor's Rules. Thus, it is crystal clear that the said surveyors would not be in a position to do actual survey work which is required to be done by surveyors in their day-to-day work. As a matter of fact, 1/4th of the persons appointed had no technical qualifications. One would not expect such a huge number of persons having no technical know-how of the subject in the cadre of surveyors. The said persons cannot do normal work regarding measurement and valuation of lands and/or buildings or preparing or copying plans. Moreover, their services are not much required for

preparation of town planning schemes as the said work is done by engineers or architects having special knowledge in the said field.

16. In view of the above-referred to circumstances, one has to come to a conclusion that the qualifications prescribed under rule 3(b)(ii) of the Surveyor's Rules and rule 3(b)(iii) of the Planning Assistant's Rules do not have much correlation or nexus with the nature of work which surveyors or planning assistants have to do. So far as graduation in law is concerned, in our opinion, that qualification is also not having much relevance because normally in the course of performance of their duties surveyors and planning assistants have to look at provisions of the statutes which are concerned with town planning and by virtue of their experience, they become wellversed with it within no time. Law Officer of the concerned department or the concerned law officer who is representing case of the department is aware of the other relevant legal provisions and therefore it cannot be said that without a degree in law a surveyor or a planning assistant cannot perform duties which he is supposed to perform.

17. In the circumstances, only on the above-referred ground, we are of the view that as qualifications prescribed under rule 3(b)(ii) of the Surveyor's Rules and rule 3(b)(iii) of the Planning Assistant's Rule have no nexus with the work which is normally done by the surveyors and planning assistants, the said rules cannot be said to be legal and proper and, therefore, we hereby strike down the said rules. It would also not be proper to promote surveyors having non-technical qualifications to the post of planning assistants as without the special technical knowledge, such promotees would not be in a position to perform duties as planning assistants.

18. With regard to the mode adopted by the respondent Government for selection of the surveyors, we do not think that the department has made any error in inviting names of suitable candidates from the employment exchange. It is always open to the concerned department of the government to invite names of eligible candidates from the employment exchange and after interviewing sufficient number of eligible candidates if appointments are made, the appointments so made cannot be said to be illegal.

19. Though we are of the view that the impugned rules cannot be held to be legal, looking to the peculiar facts of the case, we are of the view that the appointments

made by respondent No. 2 under the Surveyor's Rule should not be set aside. Respondents Nos. 3 to 8 were appointed in 1982 and they have been performing their duties since long. Looking to the fact that a substantially long period of about 16 years has elapsed, we do not think it proper to quash and set aside their appointments as surveyors. Setting aside their appointments as surveyors would put them to great difficulties because most of them might have crossed maximum age limit for appointment to any other post and if their services are terminated, they would be rendered jobless and would not have sufficient chances to get appointment elsewhere. Moreover, as the candidates were taken from the department, some of them might have also retired. Quashing and setting aside appointments of respondents Nos. 3 to 8 would thus put the said respondents to much inconvenience and as they have worked for a long period of 16 years in the cadre of surveyor and even prior thereto in the same department, we do not think it just and proper to quash and set aside the appointments.

20. For the reasons stated hereinabove, and in view of the fact that the qualifications required for the post of surveyors and planning assistants under rule 3(b)(ii) of the Surveyor (Town Planning and Valuation Department) Recruitment Rules, 1975 and rule 3(b)(iii) of the Planning Assistant (Town Planning and Valuation Department) Recruitment Rules, 1975 respectively have no reasonable nexus with the nature of work to be done by the surveyors and planning assistants, we declare the said rules to be illegal and ultra vires and, therefore, we hereby quash and set aside the said rules. We however clarify that appointments of respondents Nos. 3 to 8, who had been appointed on 15.12.1981 and 3.3.1982 in pursuance of the impugned rules, shall not be affected as we quash and set aside the said rules prospectively.

21. In the circumstances, the petition is finally disposed of as allowed. Rule is made absolute with no order as to costs.

(K. Sreedharan, C.J.)

(A.R. Dave, J.)

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